

FILED  
U.S. DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS  
FEB 16 P 3:20  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

JOSEPH P. SCHMITT, PRO SE,  
PLAINTIFF,

VS

CHRISTOPHER P. LOCONTO, ESQ.,  
DEFENDANT

C.A. No. \_\_\_\_\_

05-10572

*Referred to New Magistrate Judge*

COMPLAINT

Introduction

This is an action for Damages pursuant to 42 U.S.C. § 1983, and Declaratory Judgment pursuant to 28 U.S.C. § 220, brought by the pro se plaintiff Joseph P. Schmitt. Plaintiff alleges that the defendant Christopher P. LoConto has violated his State and Federal Constitutional Rights and in doing so has violated the Massachusetts Rules of Professional Conduct which regulates the practice of law in this state.

PARTIES

Plaintiff

Joseph P. Schmitt acting pro se for this action is the plaintiff and has the mailing address of 30 Administration Road Bridgewater Massachusetts 02324-3230. Plaintiff is a temporary civil detainee of the Commonwealth pending trial pursuant to M.G.L. c. 123A.

Defendant

Christopher P. LoConto is the defendant in this action. Defendant

(2)

LoConto is a practicing attorney of the Commonwealth and can be reached at 120 Main Street Worcester Massachusetts 01608-1170. He is being sued in both his professional and individual capacity.

#### FACTS

- 1) Defendant was appointed as counsel for plaintiff in SDP Case out of Worcester Superior Court by C.P.C.S. on or about September 2002;
- 2) Plaintiff had two checks from a publisher sent to defendant with the defendants knowlege and agreement during or about October 2002. Checks were payable to the plaintiff in the amounts of \$100.00 and \$30.00;
- 3) At various times while defendant was actively appointed as plaintiff's counsel, plaintiff mailed a substantial amount of documents to defendant. These documents were not part of the vast amount of documents contained in the case file turned over to the defendant by the Worcester District Attorney's Office;
- 4) At various times while defendant was actively appointed as plaintiff's counsel, plaintiff sent books to defendant to safe keep;
- 5) Plaintiff sent defendant a one of a kind photo of his mother, father and step son which was confirmed as received by defendant;
- 6) On countless occassions via phone conversations, written correspondence and visits plaintiff informed defendant that he required the return of his family photo in which he was told by the defendant that it would be returned to him;
- 7) On countless occassions plaintiff did request the return of his money. Defendant did, finally forward the sum of \$100.00 but the remaining sum of \$30.00 still remains unreturned to plaintiff.

(3)

Plaintiff informed defendant countless time that the publisher in which the check is payable from has gone out of business and it was of utmost importance to cash the check before it was absolutely uncashable. Defendant ignored these warning and requests;

8) Plaintiff filed a motion pro se to have defendant removed as counsel in his Worcester Superior SDP Case and another motion for the court to order defendant to return his personal property;

9) Plaintiff filed a complaint against defendant with the Office of the Bar Counsel and has received absolutely no positive action towards the return of his funds, documents, photo, or books;

10) Plaintiff has attempted to contact defendant via phone as a way to avoid having to take legal action to get his property returned but defendant, and or his office personell, refuse to accept calls from plaintiff;

11) Defendant was plaintiff's counsel for approximately two and a half years during which time plaintiff made countless complaints to defendant and C.P.C.S. regarding defendants conduct in hopes of bettering the client attorney relationship which proved to be futile;

#### PRAYER

Plaintiff prays this Honorable Court will make a declaratory judgment ruling that defendant, Attorney Christopher P. LoConto has in fact violated the Massachusetts Rules of Professional Conduct by refusing to comply with plaintiff written and verbal requests for the return of his personal property and funds, and in doing so has violated plaintiffs civil rights by causing the plaintiff to be totally unable to work on his defense due to the fact defendant has

(4)

documents needed by plaintiff that are not part of the case file produced by the District Attorney's Office.

Plaintiff is unsure of the exact quote from the Massachusetts Rules of Professional Conduct, but he believes under the heading of property there is a section that clearly indicates that defendant is in the wrong by refusing to return plaintiff's personal belongings and funds. Defendant is an attorney of the Massachusetts Bar and as such is obligated to perform his duties in compliance with the Massachusetts Rules of Professional Conduct, and is subject to sanctions if and when he so blatantly violates said rules..

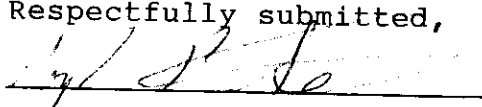
Plaintiff prays this court order defendant to reimburse him the \$30.00 with compound interest for the entire time defendant has had the plaintiff's check, which is no beyond cashable due to the defendant's own actions.

Plaintiff prays the court order defendant to immediately return plaintiff's photo of his mother, father and step son, all books and documents mailed to defendant from the plaintiff and/or that are not part of the case file directly provided from the Worcester District Attorney's Office.

Plaintiff further prays that this court issue sanctions against defendant for his unprofession conduct and award plaintiff monetary compensation for damages caused by defendant's actions.

Dated: February 8, 2005

Respectfully submitted,

  
Joseph P. Schmitt, pro se  
Mass Treatment Center  
30 Administration Road  
Bridgewater, MA. 02324-3230

JS 44  
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Joseph P. Schmitt, pro se  
30 Administration Road  
Bridgewater, MA. 02324-3230

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

Christopher P. LoConto, Esquire  
120 Main Street  
Worcester, MA. 01608-1170

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Worcester  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Pro se

ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Defendant, former attorney, violating plaintiff's civil rights and Ma. Rules of Professional Conduct.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

February 8, 2005

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSFILED  
CLERKS OFFICE  
Schmitt vs LoConto

2005 FEB 16 P 3:20

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) \_\_\_\_\_
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

U.S. DISTRICT COURT  
DISTRICT OF MASS.

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

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3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO X

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES NO X

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES NO X

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES X NO

- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION XXX WESTERN DIVISION

- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joseph P. Schmitt

ADDRESS 30 Administration Road Bridgewater 02324-3230

TELEPHONE NO. \_\_\_\_\_